

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of LINDA BURSON and U.S. POSTAL SERVICE,
POST OFFICE, Naperville, Ill.

*Docket No. 97-656; Submitted on the Record;
Issued October 22, 1998*

DECISION and ORDER

Before GEORGE E. RIVERS, WILLIE T.C. THOMAS,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

On July 15, 1987 appellant, a 36-year-old letter carrier, injured her lower back while loading a tray of flats into a jeep. Appellant filed a Form CA-1 claim for benefits based on traumatic injury on July 17, 1987, which the Office ultimately accepted for lumbosacral strain.

Appellant underwent a myelogram on December 9, 1991 which indicated she had a herniated disc at L5-S1. She underwent laminectomy/discectomy surgery to correct this condition on December 19, 1991.

Appellant filed a Form CA-2 claim for recurrence of disability on December 23, 1991, contending that she sustained a sciatica condition which was caused or aggravated by her accepted July 15, 1987 employment injury.

By decision dated February 27, 1992, the Office denied appellant's claim finding that the medical evidence she submitted in support of her claim was not sufficient to establish that her current condition or disability was caused or aggravated by her July 15, 1987 employment injury.

By decision dated August 19, 1992, the Director, on his own motion, vacated and rescinded the Office's February 27, 1992 decision, finding that appellant was entitled to compensation based on appellant's submission of new medical evidence which indicated that appellant underwent surgery for an employment-related herniated disc on December 19, 1991, and that this evidence was sufficient to establish causal relationship between the July 15, 1987 employment injury and her current medical condition.

In a letter dated August 19, 1992, the Office informed appellant that her claim was accepted for recurrence of disability due to lumbosacral strain sustained on December 19, 1991 and subsequent right herniated disc laminectomy/discectomy.

Appellant filed a Form CA-2 claim for recurrence of disability on January 8, 1993, contending that she sustained a recurrence of disability due to her employment-related back condition and that she was totally disabled from November 19 through December 20, 1992.

By decision dated May 10, 1993, the Office denied appellant's recurrence claim, finding that the medical evidence she submitted in support of her claim was not sufficient to establish that her current condition or disability was caused or aggravated by her July 15, 1987 employment injury.

By letter dated October 1, 1993, appellant requested reconsideration of the Office's previous decision.

By decision dated November 17, 1993, the Office denied appellant's claim, finding that the medical evidence she submitted in support of her claim was not sufficient to establish that her current condition or disability was caused or aggravated by her July 15, 1987 employment injury.

Appellant filed a Form CA-2a claim for recurrence of disability on March 4, 1995, contending that she sustained a recurrence of disability due to her employment-related back condition as of March 2, 1995.

In a decision dated June 7, 1995, the Office denied appellant's recurrence claim, finding that the medical evidence appellant submitted was not sufficient to establish that the claimed condition or disability commencing on March 2, 1995 was caused or aggravated by her accepted July 15, 1987 employment injury.

In a letter dated June 5, 1996, appellant requested reconsideration of the Office's previous decision. In her letter, appellant requested that her claim be considered as continuance of injury claim, as opposed to a recurrence claim. Appellant submitted several medical reports, work status updates, and Form CA-17's with her request, but the only new medical evidence appellant submitted in support of her request which was not previously considered by the Office in prior decisions was a Form CA-17 dated June 5, 1995.

By decision dated September 3, 1996, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

The only decision before the Board on this appeal is the September 3, 1996 Office decision which found that the letter submitted in support of appellant's request for reconsideration was insufficient to warrant review of its prior decision. Since the September 3,

1996 decision is the only decision issued within one year of the date that appellant filed her appeal with the Board, November 29, 1996, this is the only decision over which the Board has jurisdiction.¹

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and pertinent evidence not previously considered by the Office.² Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law, and has not advanced a point of law or fact not previously considered by the Office. The only new medical evidence appellant submitted in support of her request for reconsideration was the Form CA-17 dated June 5, 1995, which did not contain a probative, rationalized medical opinion indicating that appellant's current condition or disability was caused or aggravated by her July 15, 1987 employment injury. All the other medical evidence appellant submitted had previously been considered by the Office in reaching prior decisions. Appellant generally contended in her June 5, 1996 letter that she still suffered from residuals of her July 15, 1987 employment injury, but failed to support this contention with new and relevant medical evidence. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

¹ See 20 C.F.R. § 501.3(d)(2).

² 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Howard A. Williams*, 45 ECAB 853 (1994).

The September 3, 1996 Office of Workers' Compensation Programs' decision is affirmed.

Dated, Washington, D.C.
October 22, 1998

George E. Rivers
Member

Willie T.C. Thomas
Alternate Member

Bradley T. Knott
Alternate Member